

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ALAN GILLESPIE,)	CASE NO.1:23CV1424
)	
Plaintiff)	JUDGE CHRISTOPHER A. BOYKO
)	
vs.)	
)	
RICHARD MICHAEL DEWINE,)	ORDER OF DISMISSAL
ET AL.,)	
)	
Defendants)	

CHRISTOPHER A. BOYKO, J:

On December 20, 2023, the Court ordered Plaintiff to show cause why his Complaint should not be dismissed for failure to perfect service within ninety days of filing his Complaint as required by Fed. R. Civ. P. 4(m). On January 2, 2024, Plaintiff filed his Response stating his failure to serve was due to “oversight from counsel.” To effectuate service upon a defendant, the plaintiff is required by the Civil Rules to act in a reasonable and diligent manner.

Specifically, Rule 4(m) of the Federal Rules of Civil Procedure provides:

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

As of this date there is nothing on the docket to indicate that service was ever perfected on Defendants Dewine, Chambers-Smith, Black, Kennebrew, Roush, Woodland or the Does more than

five months after the filing of the Complaint. Although Rule 4(m) does not define “good cause,” the Sixth Circuit has stated this “requires at least excusable neglect.” *Stewart v. TVA*, 238 F.3d 424, 2000 WL 1785749, at * 1 (table) (6th Cir. Nov.21, 2000) (citing *Moncrief v. Stone*, 961 F.2d 595, 597 (6th Cir.1992)). “[S]imple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice ...” *Moncrief*, 961 F.3d at 597. See also *Dunham-Kiely v. United States*, No. 3:08-CV-114, 2010 WL 1882119, at *4 (E.D. Tenn. May 11, 2010).

As a result, the Court finds Plaintiff has failed to demonstrate good cause for failing to serve Defendants. Therefore, the Court dismisses Plaintiff’s Complaint without prejudice for failure to serve Defendants under Rule 4(m).

IT IS SO ORDERED.

/s/Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Judge